

RICARDO CENDEJAS,
Petitioner,
v.
UNITED STATES OF AMERICA,
Respondent.

**ORDER DENYING
PETITIONER'S MOTION
PURSUANT TO 28 U.S.C § 2255**

Pro se Petitioner Ricardo Cendejas moves to suspend a deportation and removal order pursuant to 28 U.S.C. § 2255, arguing that the lodging of a deportation detainer satisfies the “custody prerequisite” for habeas petitions. A prisoner does not qualify for a writ of habeas corpus “unless-- (1) [h]e is in custody under or by color of the authority of the United States or is committed for trial before some court thereof.” 28 U.S.C. § 2241 (c) (2006). Because Cendejas is no longer in custody, the Court hereby **DENIES** his petition for writ of habeas corpus, as discussed below.

1 On January 14, 2002, the Court sentenced Cendejas to twenty-one (21) months
2 imprisonment followed by three years of supervised release for violation of 21 U.S.C. §§
3 952, 960 (importation of marijuana) and of 21 U.S.C. § 841 (a) (1) (possession of
4 marijuana with intent to distribute). On August 26, 2002 (*nunc pro tunc* to August 20,
5 2002) Cendejas filed the instant habeas petition. Respondent United States of America
6 filed its opposition on January 3, 2003.

7 However, on August 29, 2003, Cendejas was released from prison. See Bettwy
8 Decl. Because it has been more than three years since Cendejas' release date, the term of
9 his three year supervised release has expired. Moreover, there is no record of a deportation
10 or removal proceeding against Cendejas. See id. Therefore, the Court hereby **DENIES**
11 Cendejas' petition for writ of habeas corpus on jurisdictional grounds because Cendejas
12 does not satisfy the custody prerequisite for habeas petitions.

13 **IT IS SO ORDERED.**

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15 DATED: August 28, 2007

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17 Hon. Rudi M. Brewster
18 United States Senior District Court Judge
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21 cc: All Counsel of Record
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